by it as to estop it to deny its assent to a contract of deposit. *Burnell* v. *San Francisco Savings Union*, 136 Cal. 499, 69 Pac. 144; *Van Allen* v. *The American Nat. Bank*, 52 N. Y. 1.

BANKRUPTCY — DISCHARGE — FAILURE TO OBTAIN DISCHARGE IN PRIOR PROCEEDING AS GROUND FOR REFUSAL OF DISCHARGE IN SUBSEQUENT VOLUNTARY PROCEEDINGS. — A bankrupt failed to apply for a discharge within the time fixed by statute after adjudication under a voluntary petition (BANKRUPTCY ACT OF 1898, § 14 *a*). After the expiration of that period he filed another voluntary petition and was adjudged bankrupt. A creditor whose debt was provable under both proceedings asked that his claim be excluded from the operation of any discharge that might be granted under an application therefor in the second proceeding. *Held*, that the relief be granted. *Monk* v. *Horn*, 44 Am. B. R. 472 (C. C. A.).

The Bankruptcy Act limits the time within which an application for discharge may be filed. (§ 14 *a*.) It also enumerates specific grounds for the refusal of a discharge. (§ 14 *b*.) It is settled law that failure to obtain a discharge, for either reason, precludes a bankrupt from procuring, in a subsequent voluntary proceeding, a discharge from debts provable in the earlier one. *In re Cooper*, 236 Fed. 298; *In re Loughran*, 218 Fed. 619; *In re Bacon*, 193 Fed. 34. The reason usually stated for the decisions is that the issue as to the right to discharge from those debts is *res judicata*. See *Siebert* v. *Dahlberg*, 218 Fed. 793, 794; *Kuntz* v. *Young*, 131 Fed. 719, 721; *In re Elby*, 157 Fed. 935, 936. See COLLIER ON BANKRUPTCY, 9 ed., 318–319. Where there has been a denial of discharge in the earlier proceeding this reasoning is sound. *In re Krall*, 196 Fed. 402; *In re Kuffler*, 155 Fed. 1018. But this theory would hardly apply to the other class of cases, where there has been no judicial determination upon the merits of the issue. See *Last Chance Min. Co.* v. *Tyler Min. Co.*, 157 U. S. 683, 691; *Foster* v. *Busteed*, 100 Mass. 409, 412. Here the true basis would seem to be that Congress intended by section 14 *a* to relieve creditors from the necessity of remaining prepared for an unreasonable length of time to prove the existence of grounds for the refusal of a discharge under section 14 *b*; and that this intent would be defeated and the latter provision practically nullified, if a bankrupt were allowed to evade the bar by instituting a second proceeding. This reasoning is set forth in several cases and is confirmed in the principal case. See *In re Cooper*, *supra*; *In re Loughran*, *supra*.

CONFLICT OF LAWS — LETTERS ROGATORY — SERVICE OF PROCESS UPON RESIDENT AT THE REQUEST OF A FOREIGN COURT. — A civil court of Mexico City issued letters rogatory to the federal court in New York requesting that service of summons be made upon a defendant, resident in New York, who was being sued in Mexico upon a contract there made and to be performed. The defendant had no property in Mexico and had not been personally served. A Mexican statute gave the court jurisdiction to render a personal judgment, despite non-residence, where the obligation sued upon was to be performed within the territorial jurisdiction. *Held*, that the request be refused. *In re Letters Rogatory*, 261 Fed. 652 (Dist. Ct., S. D., N. Y.).

Under the civil law, courts have long made use of letters rogatory to accomplish judicial acts in foreign jurisdictions. 1 FOELIX, DROIT INTERNATIONAL, 4 ed., §§ 202, 239 *et seq.*; 5 WEISS, DROIT INTERNATIONALE PRIVÉ, 2 ed., 527. And the practice has been usual in courts of admiralty. HALL, ADMIRALTY PRACTICE, part 2, tit. 19, pp. 37–43. Some common-law courts consider this general power to issue and execute letters rogatory to be inherent to prevent failure of justice. *De Villeneuve* v. *Morning Journal Ass'n*, 206 Fed. 70. See *In re Pacific Ry. Commission*, 32 Fed. 241, 256. Others, however, view it as of entirely statutory origin. See *In re Letters Rogatory*, 36 Fed. 306; *Matter of Romero*, 56 Misc.

319, 320, 107 N. Y. Supp. 621, 622. Under neither view has the practice been used for any purpose other than to procure the testimony or deposition of a witness otherwise unavailable. See WEEKS ON DEPOSITIONS, § 128. And the execution of letters rogatory rests entirely upon principles of comity. Under the theory of our law a personal judgment against a non-resident is a nullity without personal service of process. *Pennoyer* v. *Neff*, 95 U. S. 714. And service out of the jurisdiction, even though accepted, is not sufficient. *Scott* v. *Noble*, 72 Pa. St. 115. Accordingly, in the principal case, if service of process were necessary to give the Mexican court jurisdiction, the federal court was clearly correct in refusing to aid in effecting a result contrary to the policy of our legal system. *Emery* v. *Burbank*, 163 Mass. 326. If the purpose were merely the protection of the defendant, this result is accomplished without danger of prejudice by giving him informal notice of receipt of the request. The same conclusion was reached by the New York courts in a similar case. *Matter of Romero*, *supra*.

CORPORATIONS — STOCKHOLDERS: POWERS OF MAJORITY — EXPULSION OF COMPETING SHAREHOLDERS BY AMENDING BY-LAWS. — Section 13 of the Companies Act of 1908 (8 EDW. VII, c. 69) permits a company to introduce into its altered articles anything that might have been included in its general articles. A company in pursuance of this power *bona fide* passed an amendment which provided that the directors could require any shareholder who competed with the company's business to transfer his shares to nominees of the directors. The plaintiffs, minority shareholders, carried on a competing business, and a declaration is sought by them that the alteration was invalid as against them. *Held*, that the alteration is valid. *Sidebottom* v. *Kershaw Leese & Co., Ltd.*, [1920] 1 Ch. 154.

Where a contract with a member of a corporation either expressly or impliedly is made subject to future by-laws as well as to those already existing, a later amendment becomes a binding portion of the contract. *Fullenwider* v. *Sup. Council R. L.*, 180 Ill. 621, 54 N. E. 485; *Stohr* v. *San Francisco M. F.*, 82 Cal. 57, 22 Pac. 1125; *Allen* v. *Gold Reefs of West Africa*, [1900] 1 Ch. 656. Not every alteration, however, will be sustained; the power of change must not be exercised unreasonably. 1 MACHEN, CORPORATIONS, § 702; BOISOT, BY-LAWS, § 123. Thus by-laws which impair vested rights have been held invalid in the United States, though precisely what constitutes a vested right is the subject of much confusion. *Supreme Council A. L. H.* v. *Champe*, 127 Fed. 541; *Weber* v. *Supreme Tent K. M. W.*, 172 N. Y. 490, 65 N. E. 258. But see *Andrews* v. *Gold Meter Co.*, [1897] 1 Ch. 361. Restraints on the alienation of stock have uniformly been held invalid. *McNulta* v. *Corn Belt Bank*, 164 Ill. 427, 45 N. E. 954; *Bloede Co.* v. *Bloede*, 84 Md. 129, 34 Atl. 1127. And so with restrictions on the right of members to sue the corporation. *Insurance Co.* v. *Morse*, 20 Wall. (U. S.) 445; *MacMahon* v. *Sup. Tent, K. M. W.*, 151 Mo. 522, 52 S. W. 384; *Hope* v. *International Fin. Soc.*, 4 Ch. D. 327. A by-law which constitutes an unreasonable restraint of trade is also void. *Ipswich Tailors Case*, 11 Coke, 53 *a*; *Inter-Ocean Pub. Co.* v. *Associated Press*, 184 Ill. 438, 56 N. E. 822. The English courts give far wider scope to the corporate power of change than do the American courts, possibly because of the broad, inclusive language contained in Section 13 of the Companies Act. See 1 MACHEN, CORPORATIONS, § 721. It was not difficult, therefore, for the court to sustain the altered article in the principal case since it was intended as a reasonable protection of corporate interests and would undoubtedly have been sustained even in the United States.

CORPORATIONS — STOCKHOLDERS: RIGHT TO SHARE IN CORPORATE ASSETS — TRANSFEREE OF STOCK FROM A WRONGFUL STOCKHOLDER. — A stockholder